

\$10x, the portion of the section 1248(f) amount with respect to the CFC2 stock that is attributable under paragraph (d) of this section to the 40 shares of CFC1 stock distributed to DP. Thus, the amount DC is required to include in gross income as a dividend under § 1.1248(f)-1(b)(3) is \$0x (\$30x less \$30x).

(d) Under § 1.1248-8(b)(2)(iv), the \$20x earnings and profits attributable to the single block of CFC2 stock are attributed pro rata to the 40 shares of CFC1 stock. Thus, DP's postdistribution amount (defined in § 1.1248(f)-1(c)(6)) with respect to the 40 shares of CFC1 stock attributable to the CFC2 stock is \$10x, the lesser of the aggregate gain in the 40 shares of CFC1 stock of \$10x (\$40x fair market value, less \$30x section 358 basis, as described in paragraph (ii)(D) of this *Example 3*) and the \$20x earnings and profits attributable to such shares.

(5) Under paragraph (c)(3) of this section, DP's section 358 basis in the 40 shares of CFC1 stock (\$30x) is reduced by the amount (if any) by which the section 1248(f) amount attributable to such shares under paragraph (d) of this section (\$10x, as computed in paragraph (ii)(E) of this *Example 3*) exceeds DP's postdistribution amount with respect to such shares (\$10x). Thus, there is no basis reduction in the 40 shares of CFC1 stock.

(G) Pursuant § 1.367(a)-3T(e)(6), the amount of gain subject to the gain recognition agreement entered into by DP with respect to the CFC2 stock is \$10x, which is the product of DP's ownership interest percentage (100%) multiplied by the gain realized by DC in the 361 exchange prior to taking into account the application of any other provision of section 367 (\$10x), reduced by the sum of the amounts described in § 1.367(a)-3T(e)(6)(i)(A), (e)(6)(i)(B), (e)(6)(i)(C), and (e)(6)(i)(D) (\$0x).

(H) DC's distribution of the 60 shares of CFC1 stock it held before the section 361 exchange is subject to § 1.1248(f)-1(b)(2) (an existing stock distribution); however, because DC and DP make the election provided in paragraph (b)(1) of this section, § 1.1248(f)-1(b)(2) does not apply to the distribution.

(I) Under paragraph (b)(2) of this section, for purposes of section 1248, DP will have a 3-year holding period in the 60 shares of CFC1 stock received, the same holding period that DC had in the 60 shares of CFC1 stock.

(2) Under paragraph (b)(3) of this section, DP's section 358 basis in the 60 shares of CFC1 stock received (\$54x, as computed in paragraph (ii)(C) of this *Example 3*) is reduced by \$4x, the amount by which DC's section 1248 amount (\$10x) with respect to the 60 shares of CFC1 stock exceeds DP's postdistribution amount (\$6x) with respect to the 60 shares of CFC1 stock. Under § 1.1248(f)-1(c)(6), DP's postdistribution amount with respect to the 60 shares of CFC1 stock equals the amount that DP would include in gross income as a dividend under

section 1248(a) if DP sold the 60 shares of CFC1 stock immediately after the distribution, or \$6x, which is computed as the lesser of the \$6x gain in the such shares of CFC1 stock (\$60x fair market value, less \$54x basis) and \$30x of section 1248 earnings and profits attributable to the CFC1 stock, taking into account DP's 3-year holding period in the stock as required by paragraph (b)(2) of this section. As adjusted under paragraph (b)(3) of this section, DP's basis in the 60 shares of CFC1 stock is \$50x (\$54x basis, less \$4x basis reduction).

(f) *Applicable cross-references.* For rules relating to the attribution of earnings and profits to the stock of a foreign corporation following certain nonrecognition transactions, see § 1.1248-8. For rules relating to a transfer of property by a domestic corporation to a foreign corporation in a section 361 exchange that precedes a new stock distribution, see § 1.367(a)-7. If the property transferred includes stock of a corporation, see also §§ 1.367(a)-3T(e) and 1.367(b)-4. For other rules that may apply if a domestic corporation distributes the stock of a foreign corporation in a new stock distribution or an existing stock distribution satisfying the requirements of section 355, see §§ 1.367(b)-5(b)(1) and 1.367(e)-1.

[T.D. 9614, 78 FR 17044, Mar. 19, 2013]

§ 1.1248(f)-3 Reasonable cause and effective/applicability dates.

(a) *Reasonable cause for failure to comply [Reserved]* For further guidance, see § 1.1248(f)-3T(a).

(b) *Effective/applicability date*—(1) *General rule.* Except as provided in paragraph (b)(2)(ii) of this section, §§ 1.1248(f)-1 and 1.1248(f)-2 apply to distributions occurring on or after April 18, 2013.

(2) *Transactions described in Notice 87-64*—(i) *Gain not otherwise recognized.* For distributions occurring on or after September 21, 1987, and before April 18, 2013, section 1248(f)(1) shall not apply to the extent the domestic distributing corporation recognizes gain with respect to the stock of the foreign distributed corporation as a result of the distribution under another provision of subtitle A of the Internal Revenue Code.

(ii) *Section 355 distributions.* Taxpayers may apply the provisions of § 1.1248(f)-

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2(b) to distributions occurring on or after September 21, 1987.

[T.D. 9614, 78 FR 17050, Mar. 19, 2013]

§ 1.1248(f)–3T Reasonable cause and effective/applicability dates (temporary).

(a) *Reasonable cause for failure to comply*—(1) *Request for relief*. If an 80-percent distributee, a distributee that is a section 1248 shareholder, or the domestic distributing corporation (reporting person) fails to timely comply with any requirement under § 1.1248(f)–2, the failure shall be deemed not to have occurred if the reporting person is able to demonstrate that the failure was due to reasonable cause and not willful neglect using the procedure set forth in paragraph (a)(2) of this section. Whether the failure to timely comply was due to reasonable cause and not willful neglect will be determined by the Director of Field Operations International, Large Business & International (or any successor to the roles and responsibilities of such person) (Director) based on all the facts and circumstances.

(2) *Procedures for establishing that a failure to timely comply was due to reasonable cause and not willful neglect*—(i) *Time of submission*. A reporting person's statement that the failure to timely comply was due to reasonable cause and not willful neglect will be considered only if, promptly after the reporting person becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.

(ii) *Notice requirement*. In addition to the requirements of paragraph (a)(2)(i) of this section, the reporting person must comply with the notice requirements of this paragraph (a)(2)(ii). If any taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Internal Revenue Service personnel conducting

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the examination. If no taxable year of the reporting person is under examination when the amended return is filed, a copy of the amended return and any information required to be included with such return must be delivered to the Director.

(3) *Effective/applicability date*. This section applies to distributions occurring on or after April 17, 2013.

(4) *Expiration date*. Paragraphs (a)(1) through (a)(3) of this section expire on March 18, 2016.

[T.D. 9615, 78 FR 17064, Mar. 19, 2013]

§ 1.1249–1 Gain from certain sales or exchanges of patents, etc., to foreign corporations.

(a) *General rule*. Section 1249 provides that if gain is recognized from the sale or exchange after December 31, 1962, of a patent, an invention, model, or design (whether or not patented), a copyright, a secret formula or process, or any other similar property right (not including property such as goodwill, a trademark, or a trade brand) to any foreign corporation by any United States person (as defined in section 7701(a)(30)) which controls such foreign corporation, and if such gain would (but for the provisions of section 1249) be gain from the sale or exchange of a capital asset or of property described in section 1231, then such gain shall be considered as gain from the sale or exchange of property which is neither a capital asset nor property described in section 1231. Section 1249 applies only to gain recognized in taxable years beginning after December 31, 1962.

(b) *Control*. For purposes of paragraph (a) of this section, the term *control* means, with respect to any foreign corporation, the ownership, directly or indirectly, of stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote. For purposes of the preceding sentence, the rules for determining ownership of stock provided by section 958 (a) and (b), and the principles for determining percentage of total combined voting power owned by United States shareholders provided by paragraphs (b) and (c) of § 1.957–1, shall apply.

[T.D. 6765, 29 FR 14879, Nov. 3, 1964]